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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 LANA MASSA,

11 Plaintiff,

12 v.

13 CAILEN WEVODAU, *et al.*,

14 Defendants.
15

No. 09-5557 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
ACTION WITH PREJUDICE

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17 This matter comes before the Court on the recommendation of the Magistrate Judge that
18 Plaintiff's civil rights action be dismissed for failure to comply with the Court's order to file an
19 amended complaint and failure to prosecute. The Plaintiff has filed "Objections to the Report
20 and Recommendation, Notice of Fraud, and Request for more time to amend."

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22 On October 5, 2009¹, after review of pro se Plaintiff's complaint, this Court entered an
23 Order to show cause or amend the complaint. The Order outlined a number of defects in the
24 complaint including application of the Younger Abstention doctrine, and a discussion regarding
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26 ¹ The Order to show cause or amend the complaint incorrectly indicated it was filed on September 5, 2009, whereas
it was actually filed on October 5, 2009. This error has no bearing on the Order's directive for Plaintiff to respond
no later than October 16, 2009.

1 absolute immunity for judges and prosecutors. Plaintiff was directed to respond and file the
2 amended complaint no later than October 16, 2009. The matter was subsequently referred to the
3 Magistrate Judge for further proceedings. Plaintiff failed to respond and on November 10, 2009,
4 the Magistrate Judge submitted a Report and Recommendation recommending dismissal of
5 Plaintiff's complaint for failure to amend or show cause. The matter was noted for consideration
6 by this Court on December 11, 2009.

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8 On November 30, 2009, Plaintiff filed the instant pleading. Plaintiff states that he
9 received the Order to show cause on October 16, 2009, and the Report and Recommendation on
10 November 23, 2009. Plaintiff's initial response to the Order to show cause is an argument that
11 the Court lacks authority to dismiss this action. This argument is frivolous.

12 Plaintiff next attempts to justify his original complaint with argument that the judge,
13 prosecutor, and other county employees are not immune from suit, as they were acting without
14 subject matter jurisdiction and outside the scope of their authority. This argument is also
15 without merit.

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17 Finally, Plaintiff seeks additional time in which to file an amended complaint. The Court
18 declines to grant this request as Plaintiff's complaint and argument in response to show cause
19 demonstrate that amendment of the complaint would be fruitless. The court may, therefore,
20 dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where
21 the factual contentions are clearly baseless. Such is the case presented by Plaintiff.

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23 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
24 Richard Creatura, Plaintiff's objections, notice of fraud and request for more time to amend, and
25 the remaining record, does hereby find and ORDER:

26 (1) The Court adopts the Report and Recommendation;

ORDER ADOPTING REPORT AND RECOMMENDATION- 2

1 (2) This action is **DISMISSED WITH PREJUDICE** for the reasons set forth in the
2 Report and Recommendation and Order to Show Cause.

3 (3) The Clerk is directed to send copies of this Order to Plaintiff, and to the Hon. J.
4 Richard Creatura.

5 DATED this 15th day of December, 2009.

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8 FRANKLIN D. BURGESS
9 UNITED STATES DISTRICT JUDGE
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